

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHARLES CARDONE,	§	
	§	No. 397, 2005
Defendant Below,	§	
Appellant,	§	
	§	
v.	§	Court Below: Superior Court
	§	of the State of Delaware
STATE OF DELAWARE,	§	in and for Sussex County
	§	Cr. I.D. No. 0409005091A
Plaintiff Below,	§	
Appellee.	§	

Submitted: February 8, 2006

Decided: March 17, 2006

Before **HOLLAND, BERGER** and **RIDGELY**, Justices.

ORDER

This 17th day of March, 2006, on consideration of the briefs of the parties, it appears to the Court that:

1) Charles Cardone was convicted, following a jury trial, of aggravated menacing, criminal trespass, and resisting arrest. The Superior Court also found that Cardone violated probation with respect to prior convictions for assault third degree and assault second degree. Cardone appeals from his sentence, arguing that the trial court's refusal to give him a copy of his presentence report deprived him of due process. We find no merit to this claim, and affirm.

2) Prior to sentencing, Cardone's counsel asked for a copy of Cardone's presentence report in order to review its contents with his client. The Superior Court denied the request, noting the expense of making copies. The trial court observed that counsel could take notes or even copy the contents of the report by hand, if he wished. At sentencing, Cardone's mother and stepfather spoke on his behalf. In addition, Cardone engaged in a dialogue with the court about his prior convictions and his objection to the conclusions drawn by the psychologist who conducted a court-ordered evaluation of him. The court then sentenced Cardone to a total of 13 years at Level V, suspended after successful completion of the Greentree Program for Level IV, suspended after successful completion of the Crest Program for Level III probation.

3) Cardone argues on appeal that, by not being allowed to review a photocopy of the presentence report, he was deprived of a fair opportunity to comment on the information contained in that report. The presentence report includes police reports from prior arrests, and Cardone contends that the information in those police reports may not have been accurate. Cardone relies on *Moore v. State*¹ in arguing that he must be given a copy of the presentence report as a matter of fundamental fairness. Alternatively, he cites *Shepard v. United States*,² and contends that the trial court

¹887 A.2d 466 (Del. 2005).

²544 U.S. 13 (2005).

improperly took judicial notice of the police reports, which were included in the presentence report, when imposing his sentence.

4) Cardone's authorities are inapposite. In *Moore*, the presentence report had been redacted, and the trial court apparently relied on some of the redacted information. This Court held that fundamental fairness requires that defendants be given an opportunity to explain or rebut uncorroborated information that the court relies upon in sentencing. Moore was deprived of that opportunity because neither he nor his attorney had ever seen the redacted information.³ Here, by contrast, the entire presentence report was available to Cardone's attorney for as long as he needed. Thus, Cardone's ability to explain or rebut any uncorroborated information was not impaired.

5) The *Shepard* decision, likewise, is distinguishable. There, the United States Supreme Court held that a court may not rely on police reports to establish that a prior conviction satisfies the elements necessary to serve as a predicate felony for purposes of enhanced sentencing. Cardone was not given an enhanced sentence. Moreover, the trial court expressly stated that it was not relying on any charges that did not result in a conviction.

³*Moore v. State*, 887 A.2d at 469.

6) In sum, Cardone was given access to the presentence report, and a full opportunity to comment on that report in accordance with Superior Court Rule 32(c). There is nothing in this record to suggest that his not having a photocopy of that report hampered his ability to present any evidence or arguments to the trial court prior to sentencing.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice